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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

JORGE DAVID ZAMORA,

Defendant and Appellant.

2d Crim. No. B213470  
(Super. Ct. No. NA074144)  
(Los Angeles County)

Jorge David Zamora appeals his conviction, by jury, of the attempted murder of Charles Patton. (Pen. Code, §§ 187, 664.)<sup>1</sup> Appellant repeatedly stabbed Patton, a homeless person, while his accomplice hit Patton over the head with a ceramic plate. Both acts caused life-threatening injuries. Appellant contends the trial court deprived him of his right to a unanimous verdict because it did not require the jury to agree unanimously on the specific act - the stabbing or the hitting -- that constituted attempted murder. He further contends that he is entitled to additional presentence custody and good conduct credits. Respondent correctly concedes that appellant is entitled to additional credits. We will order the abstract of judgment modified to reflect the correct custody and conduct credits and, as modified, affirm.

*Facts*

Appellant worked as a laborer at an industrial demolition company in Signal Hill. On the morning of March 15, 2007, he was assigned to a work crew with Jorge Morales, Jonathan Delatorre and Jose Flores. Morales drove the group to their job site. On the way

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<sup>1</sup> All statutory references are to the Penal Code unless otherwise stated.

there, one of the passengers spotted the victim, Charles Patton, a homeless man, walking down Willow Street. Someone told Morales to make a u-turn and then to stop the truck. The passengers jumped out. Flores threw a ceramic plate at Patton, hitting him on the back of his head and breaking the plate into pieces. All three three men rushed Patton. Flores and Delatorre kicked him while appellant struck his face and head, and stabbed him several times. After about 10 seconds, the men stopped and got back into the truck with Morales. As Morales drove away, appellant and one of the other passengers threatened to kill Morales if he reported the attack to police. They also threatened his parents and little sister.

A few minutes after the attack, a police officer drove by and saw Patton lying in the middle of the street, unresponsive and bleeding profusely from wounds to his head and upper body. Paramedics took Patton to the hospital where he spent the next 20 days recovering from his injuries. The trauma surgeon who treated Patton testified that either the blow to the head or the stab wounds could have been fatal.

Testifying in his own defense, appellant explained that, earlier on the morning of the attack, he saw his friend Victor Zamora fighting with Patton. Appellant stopped to help Zamora, who was losing the fight. Zamora told appellant that Patton had stabbed him. He couldn't work that day because he'd been injured in the fight. When they drove past Patton later that morning, one of the other men told Morales to stop. Flores hit Patton over the head with the plate. Appellant was still angry about what had happened to Zamora, so he kicked and hit Patton a few times before returning to the truck. Appellant testified that he did not have a knife that day and did not stab Patton.

### *Discussion*

Appellant contends the trial court erred when it failed to instruct the jury that it was required to reach a unanimous verdict on the question of whether the stabbing or blow to Patton's head constituted the attempted murder. We disagree.

The jury's verdict in a criminal case must be unanimous and the jury must be so instructed "where the evidence shows that more than one criminal act was committed which could constitute the charged offense, and the prosecution does not rely on any single act." (*People v. Sanchez* (2001) 94 Cal.App.4th 622, 631.) "On the other hand, where the evidence shows only a single discrete crime but leaves room for disagreement as to exactly how that

crime was committed or what the defendant's precise role was, the jury need not unanimously agree on the basis or, as the cases often put it, the 'theory' whereby the defendant is guilty." (*People v. Russo* (2001) 25 Cal.4th 1124, 1132.) Thus, a unanimity instruction is not required where different criminal acts are "so closely connected as to form a single transaction or where the offense consists of a continuous course of conduct." (*People v. Sanchez, supra*, 94 Cal.App.4th at p. 631.) Nor is the instruction required where " 'the acts were substantially identical in nature, so that any juror believing one act took place would inexorably believe all acts took place.' " (*People v. Wolfe* (2003) 114 Cal.App.4th 177, 184.) Finally, the jury need not decide unanimously "by which theory [appellant] is guilty." (*People v. Jenkins* (2000) 22 Cal.4th 900, 1025.) "More specifically, the jury need not decide unanimously whether defendant was guilty as the aider and abettor or as the direct perpetrator." (*People v. Santamaria* (1994) 8 Cal.4th 903, 918-919.)

The evidence here (including appellant's own testimony) is uncontradicted: appellant, Flores and Delatorre leapt out of Morales' truck together, assaulted Patton simultaneously and then returned to the truck together. Although each person struck different blows, they acted as a team in completing the 10-second attack. The episode was a series of separate "criminal acts so closely connected as to form a single transaction" or continuous course of conduct. (*People v. Sanchez, supra*, 94 Cal.App.4th at p. 631.) Either the blow to the head inflicted by Flores or the stab wounds inflicted by appellant could have been fatal to Patton. Thus, the jury could have convicted appellant as a direct perpetrator or as an aider and abettor. To borrow a phrase from *People v. Santamaria, supra*, it was not required to agree on whether appellant was the direct perpetrator or whether he was an aider and abettor, so long as the jury agreed that he was one or the other. (*People v. Santamaria, supra*, 8 Cal.4th at p. 919.) Under these circumstances, the trial court was not required to give a unanimity instruction.

#### *Pre-Sentence Custody and Conduct Credits*

Appellant was arrested on June 6, 2007, and sentenced on January 12, 2009. He was in custody for that entire period of 587 days and is entitled to 587 days' of custody credit. (*People v. Bravo* (1990) 219 Cal.App.3d 729, 735.) The abstract of judgment awards only 586 days' credit. We will order it modified to reflect the correct number of credits.

The trial court awarded appellant no pre-sentence conduct credits. This was error. Under section 4019, a person convicted of a felony is entitled to one day of good conduct credit for every six days spent in custody, even if the person later receives a life sentence. Because appellant was convicted of a violent felony within the meaning of section 667.5, however, his conduct credit is limited to no more than 15 percent of actual presentence custody time. Appellant is therefore entitled to 88 days of good conduct credit.

*Conclusion*

The clerk of the superior court is directed to prepare and forward to the Department of Corrections a modified abstract of judgment reflecting the award to appellant of 587 days of presentence custody credit and 88 days of presentence good conduct credit. As so modified, the judgment is affirmed.

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YEGAN, J.

We concur:

GILBERT, P.J.

PERREN, J.

Richard R. Romero, Judge  
Superior Court County of Los Angeles

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Thomas Owen, under appointment by the Court of Appeal, for Defendant and Appellant.

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